

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Defendants

) FIRST AMENDED COMPLAINT FOR  
) VIOLATION OF TITLE III OF THE  
) ADA; CALIFORNIA CIVIL CODE §  
) 54, AND FOR INJUNCTIVE RELIEF  
) PURSUANT TO THE ADA AND  
) CALIFORNIA CIVIL CODE § 55

1 valid handicapped placard issued by the State of California. Because of her disability, plaintiff  
 2 requires an ADA compliant handicapped space, closest to the business entrance, crosshatch wide  
 3 enough to open her drivers side door completely to exit her vehicle and travel to the entrance.  
 4 Defendant Culver City Industrial Hardware is a public accommodation as defined by the  
 5 Americans with Disabilities Act (ADA) located in the city of Culver City, Los Angeles County,  
 6 California. This store is a retail establishment open to members of the public for the sale of  
 7 hardware goods.

8  
 9 2. Plaintiff brings this action for declaratory and injunctive relief, complaining of Defendants for  
 10 violations of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12181 *et seq.*, and  
 11 § 54 and § 55 of the California Civil Code.

12 3. Plaintiff also seeks damages under California Civil Code § 54 and § 55, and attorneys' fees,  
 13 costs, and expenses against Defendants, under these statutes and the ADA.

#### 14 JURISDICTION AND VENUE

15  
 16 4. The Court has jurisdiction over the action under the ADA, 42 U.S.C. §12188(a)(1)-(2).  
 17 Plaintiffs invoke the supplemental jurisdiction of this Court under 28 U.S.C. §1367(a) to  
 18 consider plaintiff's state law claims.

19 5. Defendant's actions, inactions, failure to comply with the ADA and California Civil  
 20 Code § 54 and § 55, and threatened failure to comply with those laws, of which Plaintiff  
 21 complains, all occurred, failed to occur, or threatened to occur in Los Angeles County, State of  
 22 California, making venue proper in this County and Court, under 28 U.S.C. §1391(b).

#### 23 PARTIES

24  
 25 6. Plaintiff, a resident and citizens of Los Angeles County, California, is a "qualified  
 26 individual with a disability," as defined by the ADA, and has a "disability" within the meaning of  
 27  
 28

1 California Civil Code § 54..

2 7. Plaintiff has a physical disability, and uses a wheelchair/and or cane to gain mobility.

3 8. Plaintiff regularly associates with persons who use wheelchairs.

4 9. Consequently, certain accommodations are necessary to allow Plaintiff access to public  
5 buildings, good, and services.

6 10. Defendant Culver City Industrial Hardware is a private entity that is responsible for  
7 the operation and maintenance of the facility described in paragraph 1 above. Defendants provide  
8 various services and goods to the general public. The form of business of Culver City Industrial  
9 Hardware is unknown, as there is no filed fictitious business statement with the County Recorder  
10 of the County of Los Angeles, nor is there a filed Corporation or Limited Liability Corporation  
11 filed with the California Secretary of State. Plaintiff believes and thereby alleges that defendant  
12 Allan Goldman is the owner, or an owner, of Defendant Culver City Industrial Hardware, form of  
13 business unknown. Plaintiff believes and thereby alleges that Defendant Joseph Sherwood is an  
14 owner, or the owner, of the subject property on which Culver City Industrial Hardware is located,  
15 and therefore liable for the claims asserted in this complaint. Plaintiff believes and thereby  
16 alleges that defendant Envoy Properties, a California Corporation, is an owner, or the owner, or  
17 the manager, of the subject property on which Culver City Industrial Hardware is located, and  
18 therefore liable for the claims asserted in this complaint. Plaintiff believes, and thereby alleges,  
19 that defendant Sam Damji is the owner, or an owner, of Culver City Industrial Hardware, form of  
20 business unknown, and is therefore also liable for the claims made in this complaint.

21  
22 11. Defendants are thus a public accommodation, or owners and operators of such, as  
23 defined by the ADA, and a public facility subject to the California Disabled Persons Act (Cal  
24 Civ. Code § 54, § 55).

25 STATEMENT OF FACTS COMMON TO ALL CAUSES OF ACTION

26 12. The ADA entitles individuals with disabilities to “full and equal enjoyment” of the  
27  
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1 goods, services, facilities, privileges, advantages, or accommodations provided by or at a place of  
2 public accommodation. 42 U.S.C. §12182(a). Title III of the ADA prohibits discrimination by  
3 any person who owns, operates, leases or leases to a place of public accommodation. 42 U.S.C. §  
4 12182 (a).

5 13. The ADA Accessibility Guidelines (“ADAAG”) set the guidelines that buildings must  
6 follow in order to comply with the ADA..

7 14. On or about April 18, 2008, plaintiff visited the premises of Defendants at 5429  
8 Supulveda Blvd, Culver City, CA 90230, with the intent to purchase goods for sale by  
9 Defendants. Plaintiff was unable to park near the entrance as there were no handicapped parking  
10 spaces available for her as mandated by the ADA and California Law. In order to park Ms. St.  
11 John would have had to park away from the entrance and would have had to cross a vehicular  
12 way to gain entrance to the building. Crossing this vehicular way could put Ms. St. John at peril  
13 as she some times can not be seen while crossing a vehicular way in her wheelchair.

14 15. Plaintiff maintains that Defendants should have to comply with the minimum number  
15 of handicapped spaces as is required of all other public accommodations pursuant to Federal and  
16 State Law, and that the failure of defendants to so comply, despite the existence of these laws for  
17 many years, is discriminatory as against her and all similarly situated disabled person.  
18 Defendant’s premises had, on the day of plaintiff’s visit, no handicapped spaces whatsoever.  
19

20 16. On July 11, 2008, counsel for plaintiff sent by certified mail notice of the lack  
21 whatsoever of the handicapped spaces required under the ADA and State Law, as described  
22 above, and requested the installation of at least two handicapped designated parking spaces and  
23 sign age closest to the entrance of the business. Plaintiff also requested statutory damages in the  
24 amount of \$ 1,000.00 Pursuant to California Civil Code § 54.3 and the payment of attorney’s  
25 fees accrued to July 11, 2008. Although an employee signed for the certified notice, no  
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27  
28

1 compliance was achieved and Defendants have refused to attempt to comply or to pay statutory  
2 damages and attorneys fees.

3  
4 17. Despite its duty and opportunity to comply with the ADA and state statutory law,  
5 Defendants chose to continue the operation of business which discriminates against Plaintiff and  
6 all other persons similarly situated on the basis of their disability, causing a hardship in the  
7 patronage of the public accommodation at the premises. Plaintiff is informed and believes and  
8 thereon alleges that subsequent to the filing of the complaint in this action, defendants attempted  
9 to install a handicapped parking space, but that such attempts only resulted in spaces that do not  
10 comply with the requirements of the ADA and California Law.

11 18. Plaintiff intends and desires to frequent defendant's premises and place of business in  
12 the future. Plaintiff would like to return and patronize defendant's premises and business but she  
13 is prevented from doing so by defendant's failure and refusal to provide disabled persons with  
14 full and equal access to defendant's premises.

15 CAUSE OF ACTION I

16 VIOLATION OF TITLE III OF THE ADA

17 19. Pursuant to law, in 1990 the United States Congress made findings per 42 USC §  
18 12101 regarding physically disabled person, finding that laws were needed to more fully protect  
19 "some 43 million Americans [with] one or more physical or mental disabilities; that "historically  
20 society has tended to isolate and segregate individuals with disabilities;" that "such forms of  
21 discrimination against individuals with disabilities continue to be a serious a pervasive social  
22 problem;" that "the Nations proper goals regarding individuals with disabilities are to assure  
23 equality of opportunity, full participation, independent living and economic self sufficiency for  
24 such individuals;" and that "the continuing existence of unfair and unnecessary discrimination  
25 and prejudice denies people with disabilities the opportunity to compete on an equal basis and to  
26 pursue those opportunities for which our free society is justifiably famous.."



1 individuals with disabilities must be provided with one handicapped accessible parking space for  
2 every 25 total parking spaces, but never less than one accessible space. In addition, one of every

3 eight accessible parking spaces must be van accessible. ADAAG 4.1.2(5)(b):

4 1 to 25 spaces 1 handicapped space

5 26 to 50 spaces 2 handicapped spaces

6 Defendant's premises requires 2 handicapped spaces with one being van accessible.

7 Defendant's premises on the day of plaintiffs visit had no handicapped spaces whatsoever

8 23. Defendants discriminated against Plaintiff on the basis of her disability, depriving  
9 Plaintiff of the full and equal enjoyment of the goods, services, facilities, privileges, advantages,  
10 or accommodations of Defendant's place of public accommodation, in violation of the ADA and  
11 State Laws, as outlined above, by failing to be compliant with any proper handicapped parking  
12 spaces.

13 24. Defendants also subjected Plaintiffs, on the basis of their disabilities, to a denial of the  
14 opportunity to participate in or benefit from the goods, services, facilities, privileges, advantages,  
15 or accommodations of its facility, in violation of 42 U.S.C. §12182(b)(1)(A)(I).

16 25. Moreover, Defendants's conduct denied Plaintiffs, on the basis of her disabilities, the  
17 opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or  
18 accommodation that is equal to that afforded to other individuals, in violation of 42 U.S.C.  
19 §12181(b)(1)(A)(ii).

20 26. Furthermore, Defendants failed to provide Plaintiffs with goods, services, facilities,  
21 privileges, advantages, and accommodations in the most integrated setting appropriate to her  
22 individual needs, in violation of 42 U.S.C. §12182(b)(1)(B).

23  
24  
25 CAUSE OF ACTION II

26 VIOLATION OF CALIFORNIA CIVIL CODE §54







DECLARATORY RELIEF

30. Plaintiffs are entitled to declaratory judgment concerning each of Defendant's

violation of law, specifying their rights as persons with disabilities in regard to Defendant's public accommodation, and the facilities, goods, and services available to the public there.

PRAYER FOR RELIEF

THEREFORE, Plaintiffs request that the Court:

A. Enter declaratory judgment that Defendant's practices, policies, and procedures in the past have prevented, and continue to prevent, Plaintiffs from fully accessing the defendant's place of public accommodation, and discriminates against them, in violation of the ADA, and California Civil Code §54, and issue a permanent injunction, requiring Defendants, their agents, servants, and employees, and all persons acting in concert with Defendants to eliminate all barriers described herein that prevent Plaintiffs from access to defendants premises ; and enjoining Defendants from violating the ADA, California Civil Code §54, and from discriminating against Plaintiffs in violation of law;

B. Award Plaintiffs actual and/or statutory damages in the amount of at least \$ 1,000.00 per violation of the above laws so stated above;

C.. Find that Plaintiff is the prevailing party in this action, and order Defendants to pay Plaintiffs' attorneys' fees, costs, and expenses; and

1  
2 D. Grant such other and additional relief to which Plaintiffs may be entitled in this action.

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3 Dated: 8/14/08

4  
5 Respectfully submitted,

6 Law Offices of Gregory B. Byberg

7 BY:

8   
9 \_\_\_\_\_

10 Gregory B. Byberg

PROOF OF SERVICE BY MAIL ( CCP 1013a, 2015.5)

State of California, County of Los Angeles

I am a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action, by business address is 270 N. Canon Drive, Floor Three, Beverly Hills, CA. 90210.

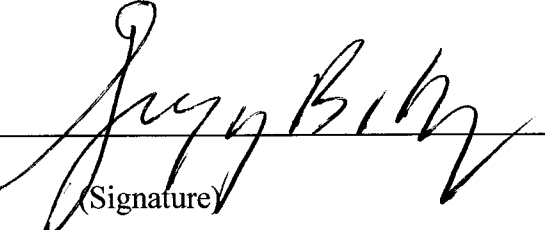
On **December 1, 2008**, , I served the within FIRST AMENDED COMPLAINT FOR VIOLATION OF TITLE III OF THE ADA; CALIFORNIA CIVIL CODE § 54, AND FOR INJUNCTIVE RELIEF PURSUANT TO THE ADA AND CALIFORNIA CIVIL CODE § 55 on all interested parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Beverly Hills, California, addressed as follows:

Culver City Industrial Hardware  
5429 Sepulveda Blvd,  
Culver City, CA 90230

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **December 1, , 2008** at Beverly Hills, California.

Gregory B. Byberg

  
(Signature)